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LAWYERS, LAW PROFESSORS, AND LOCALITIES: THE UNIVERSITIES OF ABERDEEN, 1680-1750

The sesquicentenary of a university is an occasion for reflection. If the Queen's University of Belfast is an international and outward-looking university, it is also one with close links to its local community. In this, of course, it is scarcely unusual. Universities live in a symbiotic relationship with the towns and cities in which they are located: and, despite nineteenth-century dreams of academic pastoral, universities in the main are urban institutions. If there have been some recent advances, much scholarship on the history of universities has yet to take this fully into account.¹ It is important to grasp, however, that the location of a university determines much of its institutional character. If the self-conscious "College Gothic", common on so many American campuses, or the style of the Lanyon Building at Queen's says something about the intellectual aspirations of institutions, localities also influence architecture and determine the spaces in which academic life is acted out. Correspondingly, a major university may also have a significant impact on even a large city, as, for example, the major employer or the creator of large, dominating buildings. The complex relationship of towns and universities also affects intellectual life. Thus the development of an academic discipline can be enhanced or retarded by the politics of its locality.² The development of knowledge and disciplines in any institution is subject to many contingencies.

One feature of this interdependency of knowledge and locality is the mutual relationship between universities and the local professions they have often served. This interdependency and mutual influence is made more complex by the relationships local universities and professions have with wider constituencies. This paper is the first of two exploring this huge topic through a study of the development of law teaching and professional education in the universities and town of Aberdeen in the era of the Scottish Enlightenment, taking this to run roughly, if somewhat generously, from 1680 to 1830. Roger Emerson has already argued that the size and institutional complexity of a town can determine the nature of its individual enlightenment.³ Aberdeen is particularly interesting in this context. It had two universities: King's College and University (founded 1495) in the burgh of Old Aberdeen, and Marischal College and University (founded 1593) in the royal burgh of Aberdeen itself. At the beginning of the period here

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1. See, eg, Bender (ed), *The University and the City: From Medieval Origins to the Present* (1988).
 2. See, eg, Cairns, "Academic Feud, Bloodfeud, and William Welwood: Legal Education in St. Andrews" (forthcoming).
 3. Emerson, "The Enlightenment and Social Structures", in Fritz and Williams (eds), *City and Society in the 18th Century* (1973), p 99.

considered, the Poll Tax records show that, of Scottish burghs, Aberdeen had (after Edinburgh) the highest proportion of men following professional occupations.⁴ This was presumably due to its position as the most important northern town. As in Edinburgh, the largest professional group was that of the lawyers.⁵ Aberdeen possessed a Sheriff Court, a Commissary Court and a Burgh Court, and was a circuit town for the Court of Justiciary.⁶ The Society of Advocates was the local group of élite legal practitioners, but Aberdeen had other men practising before the local courts and as writers, notaries, or other law agents.⁷ The history of legal practice and legal practitioners in Scotland is still to be written, but these local men would have passed their time drafting the numerous deeds required for land transactions, the bonds required to secure debts, and the inventories and documents required to administer estates, as well as drafting the necessary pleadings and appearing in court to represent clients in litigation.

There have traditionally been two modes of training as a lawyer: apprenticeship to an experienced practitioner for a certain number of years, or academic training in a university — this latter until towards the end of the seventeenth century being solely in Civil (that is Roman) law and Canon law. Local faculties and societies of procurators and writers in Scotland, including such leading bodies as the Writers of the Signet in Edinburgh, the Faculty of Procurators in Glasgow, and the Society of Advocates in Aberdeen, required those seeking admission to their ranks to serve an apprenticeship for a number of years. This system had grown up from a mixture of practice, Acts of Parliament, and Acts of Sederunt. In contrast, from at least the later sixteenth century the Faculty of Advocates, the élite organisation of lawyers in Edinburgh who had monopoly rights of pleading in the Court of Session and Court of Justiciary and who by the late seventeenth century were largely recruited from Scottish landed society, had always had a strong preference for the admission as advocates of men trained in law in a university.⁸ To secure this they had eventually achieved by the

4. Whyte, "The Occupational Structure of Scottish Burghs in the Late Seventeenth Century", in Lynch (ed), *The Early Modern Town in Scotland* (1987), p 222; Dingwall, *Late Seventeenth-Century Edinburgh: A Demographic Study* (1994), p 146.

5. See Stuart (ed), *List of Pollable Persons within the Shire of Aberdeen. 1696* (1844), ii, pp 595-632. There I counted in Aberdeen: two writers, five notaries, and five procurators (only these last were members of the Society of Advocates, one being in fact listed as Commissioner of Supply) listed, but only seven physicians and apothecary-surgeons. There is also listed the Commissary, and the officials such as the court clerks and messengers necessary to operate the system. One suspects also that the Town-Clerk is a writer. For Old Aberdeen we find, *ibid*, ii, pp 583-95: one advocate and the Commissary Clerk (also an advocate) but no physicians or surgeons other than the mediciner at King's College. On Edinburgh, see Dingwall, *Late Seventeenth-Century Edinburgh*, pp 216-17.

6. Aberdeen was one of the few places in Scotland with an active Justice of the Peace Court in the later seventeenth century, but it, like the Kirk Session, was largely engaged with policing morals: DesBrisay "Menacing their Persons and Exacting on their Purses": The Aberdeen Justice Court, 1657-1700" in Stevenson (ed), *From Lairds to Louns: Country and Burgh Life in Aberdeen 1600-1800* (1986), p 70.

7. See n 4 *supra*.

8. Cairns, "The Law, the Advocates and the Universities in Late Sixteenth-Century Scotland" (1994) 73 *Scottish Historical Review* 171. On the social origins of advocates in this era, see Rae, "The Origins of the Advocates' Library" in Cadell and Matheson (eds) *For the Encouragement of Learning: Scotland's National Library 1689-1989* (1989), pp 3-6.

late seventeenth century a system of examination in Latin on Civil law of virtually all candidates for admission that required them to have a level of knowledge of the discipline that was only readily obtainable in a university.⁹ Unfortunately, however, the advocates had prevented the successful creation of the chair in law proposed for the University of Edinburgh in 1589, while shortly thereafter the teaching of law had been abandoned in St Andrews.¹⁰ The new charters of erection of the universities of Glasgow in 1577 and of King's College, Aberdeen (first proposed in the 1570s, but only ratified in 1597) had not allowed for legal education, while that of Marischal College in 1593 had been modelled on the new Foundation of King's.¹¹ In the sixteenth century the training thought desirable for advocates was generally obtained abroad, mainly in France.¹² In the seventeenth century the universities of the Dutch republic, especially those of Utrecht and Leiden, attracted Scottish law students, where, by the end of the century, they typically took courses on the *Institutes*, the *Digest*, natural law, and history.¹³

In 1619, on the other hand, the old Foundation of King's College was revived, and with it the offices of Civilist and Canonist.¹⁴ Thus, alone of the universities of Scotland, King's College still preserved two law chairs into the Restoration period: one of Civil law, the other of Canon law. By 1690, however, the office of Canonist had been allowed to lapse. Already in 1664 it was noted that there was no Canonist "neither any necessite for that profession".¹⁵ Later, Robert Forbes was appointed Canonist, but some type of special arrangement was made with him, and the office was left vacant, while in 1696 the Principal informed a Visitation that "ther hath nothing bein in this colledge but ane titular Canonist".¹⁶ It was not so for the Chair of Civil Law, which was always filled.

This was the era when the Faculty of Advocates started to press seriously for the creation of law chairs in Scotland, especially chairs in Civil law, yet

9. Cairns, "The Formation of the Scottish Legal Mind in the Eighteenth Century: Themes of Humanism and Enlightenment in the Admission of Advocates", in McCormick and Birks (eds), *The Legal Mind: Essays for Tony Honoré* (1986), pp 255-63.
10. Dickinson, "The Advocates' Protest against the Institution of a Chair of Law in the University of Edinburgh" (1926) 23 *Scottish Historical Review* 205; Cairns, "Academic Feud, Bloodfeud, and William Welwood", n 2 *supra*; Cairns, "The Law, the Advocates and the Universities in Late Sixteenth-Century Scotland", n 8 *supra*.
11. Durkan and Kirk, *The University of Glasgow, 1451-1577* (1977), pp 328, 330-31; Stevenson, *King's College, Aberdeen, 1560-1641: From Protestant Reformation to Covenanting Revolution* (1990), pp 35-37, 44-51, 149-66; *Acts of the Parliaments of Scotland* (1814-75), iv, p 153.
12. Hannay, *The College of Justice: Essays on the Institution and Development of the Court of Session* (1933), pp 135-64; Durkan, "The French Connection in the Sixteenth and Early Seventeenth Centuries", in Smout (ed), *Scotland and Europe 1200-1850* (1986), p 19.
13. Nève, "Disputations of Scots Students Attending Universities in the Northern Netherlands", in Gordon and Fergus (eds), *Legal History in the Making: Proceedings of the Ninth British Legal History Conference Glasgow 1989* (1991), pp 95-99; van Strien and Ahsmann, "Scottish Students in Leiden at the End of the Seventeenth Century: The Correspondence of John Clerk, 1694-1697" (1992) 19 *Lias* 271.
14. Stevenson, *King's College, Aberdeen, 1560-1641*, p 67.
15. *Fasti Aberdonenses: Selections from the Records of the University and King's College of Aberdeen, 1494-1854* (1854), p 320.
16. Aberdeen University Library, King's College Minutes 1684-1689, MS K 38, pp 4-5; *Fasti Aberdonenses*, n 15 *supra*, p 377.

the existence of these chairs in King's College, Aberdeen was never acknowledged by them in their campaign.¹⁷ The oddity of this omission seems not to have attracted the attention of modern scholars, presumably because these chairs are generally believed to have been sinecures by this date. This belief would have been fostered by the familiar comment by Alexander Daunay, the current Civilist, to the Royal Commission on the Universities of Scotland in 1827 that

"I have been now incumbent, as Professor of Civil Law, since the year 1793, and I have never been called upon, nor have I ever given any lectures; nor, as far as I know, has any such thing been attempted to be given by my predecessors for centuries".¹⁸

The description of King's College published in 1799 in the *Statistical Account of Scotland* is also well-known:

"The suppression of the professorship of canon law has already been noticed: that of civil law still subsists; but the study of it not being prosecuted in this part of the country, no lectures have been given for a long time past, in this branch of science."¹⁹

Already in the 1780s it could be claimed: "In the King's College there has always been a Professorship of laws; but for a century past, none in that office have found the smallest encouragement for opening a class".²⁰ These published remarks in prominent primary sources much used for the history of the universities of Aberdeen may explain the attitude of modern scholars; they do not account for the way the Faculty of Advocates ignored these endowed chairs in law, given that, as we shall see, Daunay was wrong: if the Chair of Canon Law was ineffective and eventually left vacant, law was taught from the Chair of Civil Law at the end of the seventeenth and the beginning of the eighteenth centuries. Moreover, there is evidence of law teaching in Marischal College up to the middle years of the eighteenth century. Given the focus on jurisprudence of much moral thought in the Scottish Enlightenment, the ending of these classes, such as they may have been, is also remarkable.

To solve this conundrum it therefore becomes important to examine the evidence about the teaching of law in the universities of Aberdeen and its relationship, first, to the aspirations of the local legal profession and of the Faculty of Advocates in Edinburgh, and secondly, to local politics (often familial) and the wider politics of Scotland. The second of these

17. See, eg, Cairns, "Sir George Mackenzie, the Faculty of Advocates, and the Advocates' Library", in Mackenzie, *Oratio inauguralis in aperienda jurisconsultorum bibliotheca*, ed Cairns and Cain (1989), pp 23, 33 n 43; Cairns, "John Spotswood, Professor of Law: A Preliminary Sketch" in Gordon (ed) *Miscellany Three*, Stair Society (1992), pp 131-34.

18. *Evidence, Oral and Documentary, Taken and Received by the Commissioners Appointed by His Majesty George IV., July 23rd, 1826; and Re-appointed by His Majesty William IV., October 12th, 1830; For Visiting the Universities of Scotland, Volume IV. University of Aberdeen*, 1837 Parliamentary Papers XXXVIII, p 45.

19. [Gordon], "University and Kings College of Aberdeen", in Sinclair (ed), *The Statistical Account of Scotland (1791-1799)*, xxi, p 87.

20. *A Collection of All the Papers Relating to the Proposal for Uniting the King's and the Marischal Colleges of Aberdeen, Which Have Been Published by Authority of the Colleges (1787)*, p 12.

relationships has been the subject of a recent important study by Emerson.²¹ Through most of the period with which we are concerned, Scottish politics revolved around rivalry between the great families (and their associates) whose co-operation was necessary for the government of the country. The period from 1715 to 1761 was marked by a struggle for power and control of patronage between two groups of Whig noble families. The first of these was known as the Argathelians. This was an association focused on John, second Duke of Argyll (until he went into opposition in 1739) and his brother Archibald, Earl of Ilay (later third Duke). The second major group was called the Squadrone Volante. This was an association of related families led by the Dukes of Montrose and Roxburghe, containing, notably, the legal dynasty of the Dundases of Armiston. In this period it was mainly animated by opposition to the rise of Ilay and Argyll.

The standard histories of the universities of Aberdeen have in general said little — or little worthwhile — about the study of law.²² Macfarlane's study of William Elphinstone pays due regard to the significance of law in his foundation of the University and King's College, but for any further discussion of legal education we have to wait for Maclaren's short essay on the relationship between the universities and the professions of medicine, law, the church, and the professoriate in Aberdeen from 1760 to 1860, and Girvin's account of John Dove Wilson who held the chair in law in the now united University of Aberdeen at the end of the nineteenth century.²³ Nonetheless there has been some relevant scholarship: Stevenson has looked at the suppression and revival of the law chairs in King's College after the reformation, and Emerson's study of patronage in the Aberdeen universities in the eighteenth century has examined appointments as Civilist, while Wood has also paid some attention to the possibility of law in the curriculum.²⁴ A new consideration of the evidence is therefore required. This paper will accordingly examine the state of legal education in Aberdeen in order not only to explain why the Faculty of Advocates did not try to use the chairs to found the law school they desired in Scotland, but also to consider the extent and nature of instruction in law in Aberdeen until the middle of the eighteenth century, by the end of which period it had ceased in both the universities.

21. Emerson, *Professors, Patronage and Politics: The Aberdeen Universities in the Eighteenth Century* (1992).

22. See, eg, Rait, *The Universities of Aberdeen. A History* (1895), pp 181-82. Kennedy, "The Faculty of Law", in Anderson (ed), *Studies in the History and Development of the University of Aberdeen: A Quatercentenary Tribute Paid by Certain of Her Professors and of Her Devoted Sons* (1906), p 235 is distinctly disappointing.

23. Macfarlane, *William Elphinstone and the Kingdom of Scotland, 1431-1514: The Struggle for Order* (1985), pp 377-82; Maclaren, "Privilege, Patronage and the Professions: Aberdeen and its Universities, 1760-1860", in Carter and Withrington (eds), *Scottish Universities: Distinctiveness and Diversity* (1992), p 96; Girvin, "Professor John Dove Wilson of Aberdeen" [1992] *Juridical Review* 60. Meston, "The Civilists of Aberdeen: 1495-1995" [1995] *Juridical Review* 153 lists the holders of the Chair of Civil Law, while Hope "The Universities of Aberdeen and the Court of Session in Edinburgh" [1995] *Juridical Review* 5 has some pertinent remarks though focused on another issue.

24. Stevenson, *King's College, Aberdeen, 1560-1641*, pp 28, 48-49, 67; Emerson, *Professors, Patronage and Politics*, pp 19-20, 39-40, 63-69, 81-84, 87, 97; Wood, *The Aberdeen Enlightenment: The Arts Curriculum in the Eighteenth Century* (1993), p 60.

UNIVERSITY CLASSES ON LAW, 1680-1717

In 1741 Principal Chalmers of King's College claimed that under the Foundation the Civilist was required to lecture on the *Institutes* of Justinian.²⁵ The statutes of 1514 in fact required the students of Civil law to read the *Institutes*, and provided that the course of their studies should follow that at the University of Orléans, which was of course considerably more extensive than this.²⁶ Such information as we have for our period, however, tends to suggest that the Principal's interpretation, though put forward to support his protest against an election, was correct.²⁷

The most substantial evidence of what the Civilists taught is provided by the manuscript notes of John Gordon's "*Cursus Iuridicus*" of 1701, found among the law books that Gordon, Civilist, 1696-1717, bequeathed to the Library of King's College.²⁸ This manuscript demonstrates that his classes were lectures on the *Institutes*, although he also prepared "*Positiones Juridicae*" for his students to defend in public.²⁹ This is supported by the six printed law books he bequeathed to the Library: the 1604 Amsterdam edition of the *Corpus iuris*, an edition of Zasius's *Epitome feudorum*, an edition of the *Institutes* with notes, and three commentaries on the *Institutes*.³⁰ There is no other direct evidence of what was taught. In October 1684 the Bishop of Aberdeen presented James Scougal, advocate in Aberdeen, to the office of Civilist.³¹ The minutes of King's College record that on 19 November 1684 Scougal began his public lessons with an inaugural discourse "*de ratione docendi et discendi juris*". This is a common — indeed, stock — theme, and tells us little of Scougal's actual course, especially since this was evidently a significant public occasion in "the Common Schoole" attended by many individuals other than the students.³² The next year it is recorded that Scougal began his lessons on 9 December, giving an introductory discourse "*de Justitia et Jure*".³³ This is the rubric of the opening title of both the *Institutes* and the *Digest*: the breadth of the topic and the fact that it was recorded in the minutes suggest, however, that it was again a formal, public lecture, though it could be the opening lecture of a series on either the *Digest* or the *Institutes*. The only other evidence having a bearing on this issue comes from the Visitation of 1680, when it was ordained that "the Civilist shall give attendance and teach his lessone at least once in the weeke,

25. See Aberdeen University Library, King's College Minutes 1734-1754, MS K 43, p 138.

26. Macfarlane, William Elphinstone, n 23 *supra*, p 380.

27. See Emerson, *Professors, Patronage and Politics*, n 21 *supra*, pp 63-65 for the context of the Principal's claim.

28. Aberdeen University Library, King's College Library Accessions 1710-1750, MS K 112 (list dated 21 July 1736).

29. Aberdeen University Library, MS 132.

30. Aberdeen University Library, King's College Library Accessions 1710-1750, MS K 112. Only one of these can now be identified in the Library: *Johannis Borcholten IC. Clarissimi, et in academia Iulia quondam antecessoris, in quattuor institutionum iuris civilis libros, commentarii* (Cologne, 1610).

31. Aberdeen University Library, King's College Minutes 1684-1689, MS K 38, pp 1-2, 4-5.

32. *Ibid*, p 6.

33. *Ibid*, p 14.

during the sitting of the collidge''.³⁴ The small number of lectures possible under such a provision suggests that only the *Institutes* would be taught.

By 1700 the Library had a small collection of books on Civil and Canon law, those on the former being fairly standard, either medieval or humanist, works. Although a somewhat old-fashioned selection, it would have supported the teaching of the Civilist.³⁵ Not enough, however, is known of law libraries in Scotland at this period and how they related to teaching to draw any conclusions from the holdings, especially since the volumes appear to have been acquired in a random fashion.

At the time of the Visitation of 1680, the Civilist was George Nicholson of Cluny and Kemnay, a member of the Faculty of Advocates in Edinburgh, though from the Aberdeen region. He had been elected in 1673, the minute specially noting that this was in part because of all the business the College had pending before the Lords of Council and Session in Edinburgh.³⁶ Ignoring the issue of the activities of Nicholson's predecessors, this raises the question of the extent to which he ever taught or was even intended to teach, given his evident success at the Bar, and his eventual appointment as a Senator of the College of Justice. It is a tempting and likely speculation that the appointment was primarily designed as remuneration for his assistance as an advocate. On the other hand, Nicholson, who had been MP for Aberdeen in 1661-62, currently held the post of Sheriff-Clerk of Aberdeen (1672-78).³⁷ There may have been some hope that he would attend the College. Nonetheless, it is telling that the Visitation, after requiring the Civilist to attend and teach, added that

"if, because of the meannes of the salarie due to the civilist, the said Mr. George or any other person refused to give attendance and teache conforme to the foundatione, [the meeting] declaired the place to be vacant and the salarie to be imployed upon annuel rent, for makeing up of ane additional stocke to one who should imbrace that office thereafter".³⁸

Nicholson declared that he wished to remain as Civilist but could not attend the current session (1680-81). He was given leave to stay in Edinburgh for two months, with the Bishop, as Chancellor, given power to extend this for another two.³⁹ It looks as if Nicholson never taught, as on 24 October 1684 it was noted that the position of Civilist had been vacant for a long time since the removal of Nicholson, now a Senator of the College of Justice (appointed 1682).⁴⁰ It was presumably to avoid the problem of an absentee Civilist that Bishop Haliburton of Aberdeen presented to the office in 1684 the local

34. *Fasti Aberdonenses*, n 15 *supra*, p 356.

35. Aberdeen University Library, Catalogus Librorum in Bibliotheca Collegij Regij Aberdonensis Contentorum Secundum Ordinem Alphabeticum, MS K 111, fos 25r-26v.

36. Aberdeen University Library, King's College Minutes 1662-1679, MS K 37, fos 29v-30r.

37. Grant, *The Faculty of Advocates in Scotland 1532-1943 with Genealogical Notes* (1944), p 164.

38. *Fasti Aberdonenses*, n 15 *supra*, p 356.

39. *Ibid*, p 357.

40. Aberdeen University Library, King's College Minutes 1684-1689, MS K 38, pp 1-2.

advocate Scougal, who does appear to have tried to teach.⁴¹ If the salary was small, Scougal combined the office with that of Commissary of Aberdeen, a post to which he had been presented in 1680 by his own father, Patrick Scougal, Bishop of Aberdeen 1664-1682.⁴² Scougal, however, resigned in 1687, to be succeeded by John Haliburton, son of Bishop Haliburton.⁴³ Of Haliburton's tenure nothing can be said other than he resigned in 1689.⁴⁴ His successor was John Moir, an Edinburgh advocate.⁴⁵ Moir held the office until his death early in 1696.⁴⁶ Although from an Aberdeenshire family (his father was John Moir of Stoneywood), he appears to have been another absentee who did not teach; his absence prompted Robert Forbes, another local man who was a member of the Faculty of Advocates in Edinburgh, to seek the post in 1694. The Masters opposed this on the grounds, *inter alia*, that he would not be able to attend nor give weekly lessons on Civil law. Forbes complained to the Visitors currently inspecting the universities.⁴⁷ Forbes did not live to gain the office after Moir, as he himself died in March 1696.⁴⁸ His complaint, however, may explain why the Visitation of 1696 quizzed the Principal on 21 August on the effectiveness of the Chair in Civil Law. The Principal was able to respond that "the present Civilist being but laity admitted hath had two lessones already".⁴⁹ This was John Gordon, who, as we have seen, taught at least some of the time. That he was resident and willing to teach is no doubt part of the explanation of why he was chosen. Gordon was presented to the office by the Principal and Masters on 1 April and admitted by the Commissary on 7 April.⁵⁰

It is possible on the basis of the above discussion to suggest why the Faculty of Advocates did not consider the office of Civilist in King's College, Aberdeen of any significance in their desire to establish chairs in law in Scotland, even though they must have been well aware of its existence, given that some of their members had held it. First, it is plain that the teaching was intermittent. Secondly, the teaching was elementary and probably limited to a course on Justinian's *Institutes*. Moreover, if the course of John Gordon is typical, the level of teaching of the *Institutes* by the Civilists at King's College was considerably more elementary than that of

41. *Ibid.* Civilists were normally elected in a procedure involving the Masters and some individuals elected *ad hoc* as procurators of the four nations. If a vacancy had not been filled within 30 days by this procedure, the right of presentation devolved on the Bishop as Chancellor *ex officio*.

42. Clyne, "The Advocates in Aberdeen. No. 3" (1887) 1 *Scottish Notes and Queries* 68.

43. Aberdeen University Library, King's College Minutes 1684-1689, MS K 38, pp 19-20.

44. *Ibid.*, pp 23-4.

45. *Ibid.*

46. Grant, *Faculty of Advocates*, n 37 *supra*, p 152.

47. Aberdeen University Library, MS K 255/44, Papers Relating to the Visitation Commission . . . 1696. I am indebted to Roger Emerson for this reference and information. Unfortunately, Minute Books are lacking for the period from 1689-1700. Forbes was probably the son of Thomas Forbes of Echt who had been admitted to the Faculty of Advocates in 1692.

48. Grant, *Faculty of Advocates*, n 37 *supra*, p 74.

49. *Fasti Aberdonenses*, n 15 *supra*, pp 377-78.

50. See Fettercairn MSS, on deposit in the National Library of Scotland, Acc 4796/213, Decreet of Declarator, Sir William Forbes against James Thomson, p 13.

the private teachers in Edinburgh in the early eighteenth century.⁵¹ This course would therefore not satisfy the needs and aspirations of the Faculty of Advocates, who, in any case, would also have wanted a course on the *Digest*. Moreover, Scougal, when he demitted office as Civilist, was admitted as an advocate by the Lords of Session on 8 June 1687 without undergoing the normal examinations in Civil law, because "he did not suppose himself qualified to undergo the usual trial", though he had pointed out that he had been Commissary of Aberdeen for seven years, in which time he "had applied himself to the study of the municipal and civil laws".⁵² This can scarcely have bred confidence among the Faculty in the teaching of the Aberdeen Civilists. Furthermore, if the chair was endowed, the endowment was scarcely generous: towards the end of this initial period the salary was listed as £10 8s 6½d, though it seems soon to have risen to £40 14s 1½d.⁵³ Other than as a sinecure the office of Civilist cannot have been at all attractive to members of the Faculty of Advocates, supposing that among their ranks was someone qualified and interested in teaching, since, in Aberdeen, he would be isolated from lucrative practice at the Bar to supplement earnings from the chair. A candidate for the chair in the 1740s, who was a member of the Faculty of Advocates, candidly admitted "that by reason of the more lucrative employment he had during the Session at Edinburgh as an Advocat, and the time necessary during the vacancys to look after and improve his estate in Liddesdale, he could spend little or no time in this place."⁵⁴ It is therefore no surprise that when formal instruction in law of the type the Faculty desired started in Scotland, it happened in Edinburgh.⁵⁵ As an active chair, that of Civilist was therefore likely only to be attractive to practitioners in Aberdeen, as a supplement to their other activities and sources of income. It is notable that the only definite evidence we have of teaching concerned two advocates in Aberdeen: Scougal and Gordon. The Faculty of Advocates in Edinburgh, however, were unlikely to rely on members of the Society of Advocates in Aberdeen to provide an adequate education for candidates for admission. The Aberdeen practitioners were unlikely to have experienced the modern sophisticated education in law that most members of the Faculty by this date had experienced in the Netherlands and wished to develop in Scotland. Aberdeen, moreover, was too far from Edinburgh, which was where the Faculty of Advocates was based. Edinburgh remained even after 1707 the social hub for the landed class, from which the Faculty were mainly recruited. It is true, however, that the Poll Tax records show that Aberdeen had a proportionally slightly higher group of resident landowners and gentry than Edinburgh, but, as Whyte has pointed out, these "resident heritors were mainly small lairds . . . living off rents of under £500 Scots per

51. Compare Aberdeen University Library, MS 132 with National Library of Scotland, Saltoun, MSS 17807-9 (notes on the *Institutes* taken from the lectures of John Cuninghame).

52. Found quoted in Clyne, "The Advocates in Aberdeen. No. 3", n 42 *supra*, 68-69.

53. See the separately paginated list of Scottish offices in Chamberlayne, *Magnae Britanniae Notitia: Or, the Present State of Great Britain* (1723), p 9; and in *ibid* (1726), p 11.

54. Aberdeen University Library, MS 214, Nineteen Papers Catanach 1743-45, Answers Mr Burnet to the Principals Protest, p [3].

55. Cairns, "John Spotswood, Professor of Law", n 17 *supra*.

year".⁵⁶ This was not the type of landed society with which members of the Faculty identified themselves. Men preparing for admission to the Faculty had normally passed through their basic university education and could be expected to seek the pleasures of a more sophisticated metropolitan environment than Aberdeen.

This, however, raises the interesting issue of who in fact attended the classes on Justinian's *Institutes* when actually given by the Civilist. There is no direct evidence. If the regular curriculum in arts did not include attendance at the class of the Civilist, some of those following it may nonetheless have taken his course on the *Institutes* when it was offered.⁵⁷ The more advanced divinity students may have attended the lectures in Civil law, as they appear to have been interested in doing in Glasgow a little later.⁵⁸ The obvious candidates for attendance at the Civilist's classes, however, are the apprentices of the Society of Advocates. This suggestion might seem to be supported by the tendency to link the chair with the office of Commissary, especially since the Society developed out of the practitioners before the Commissary Court.⁵⁹ One can readily infer close linkages between the bishop who appointed the Commissary, and whose Cathedral in Old Aberdeen near King's College was the site of the Court, and the Professor of Civil Law and the Society.⁶⁰ By the time with which we are concerned, however, these linkages were becoming uncoupled. The bishops finally disappeared with the restoration of Presbyterianism in 1690. From 1690 the Court sat in Aberdeen rather than in Old Aberdeen.⁶¹ The Sheriff Court and the Burgh Court must now have loomed large in the practice of the members of the Society. The locus of practice of the advocates had moved definitively to Aberdeen from Old Aberdeen. The Poll Tax records of 1696 thus show only one advocate, George Adam, and the Commissary Clerk, John Gordon, the future Civilist, and an advocate, resident in Old Aberdeen.⁶² Attendance of apprentices, now based in Aberdeen, at the lectures of the Civilist, if not impossible, would not have been so easy as it would have been before this development. Furthermore,

56. Whyte, "The Occupational Structure of Scottish Burghs", n 4 *supra*, pp 222-23.

57. See Shepherd, "The Arts Curriculum at Aberdeen at the Beginning of the Eighteenth Century", in Carter and Pittock (eds), *Aberdeen and the Enlightenment: Proceedings of a Conference held at the University of Aberdeen* (1987), p 146; Wood, *Aberdeen Enlightenment*, pp 1-8, 61-73.

58. See W. Forbes to Principal Stirling, 30 Jan 1717, Glasgow University Library, MS Gen 204/16. See also Cairns, "The Origins of the Glasgow Law School: The Professors of Civil Law, 1714-1761" in Birks (ed), *The Life of the Law: Proceedings of the Tenth British Legal History Conference Oxford 1991* (1993), p 180.

59. See, eg, *History of the Society of Advocates in Aberdeen*, ed Henderson (1912), pp 52-55. The same is true of the Faculty of Procurators in Glasgow: Muirhead (ed), *The Old Minute Book of the Faculty of Procurators in Glasgow, 1668-1758* (1948), pp 35-39.

60. See Stevenson, "The Commissary Court of Aberdeen in 1650", in Sellar (ed), *Miscellany Two*, Stair Society (1984), p. 144.

61. *Ibid.* See Act 1690, c 67 in *Acts of the Parliaments of Scotland*, ix, p 204; Clyne, "The Advocates in Aberdeen. No. 2" (1887) 1 *Scottish Notes and Queries* 42 at 43; and Stevenson, "Who was John Spalding?" (1985) *Aberdeen University Review* 102.

62. *List of Pollable Persons within the Shire of Aberdeen. 1696*, n 5 *supra*, ii, pp 591, 592. Even if other advocates, such as William Baxter (see *History of the Society of Advocates in Aberdeen*, p 93) may have lived in Old Aberdeen, but not be listed in the Poll Tax records, the basic point is not affected.

the low rate of admissions as an advocate suggests that the Society's apprentices could hardly have been the mainstay of the lectures of the Civilist.

ADMISSIONS TO THE SOCIETY OF ADVOCATES
IN ABERDEEN, 1651-1750, BY DECADE

1651-60	1661-70	1671-80	1681-90	1691-1700
7	10	10	4	7

1701-10	1711-20	1721-30	1731-40	1741-50
8	4	6	7	10

Source: *History of the Society of Advocates in Aberdeen* (1912)

The disappearance of the early records of the Society of Advocates makes it difficult to be certain as to the training of its members. Such evidence as we have, however, suggests that attendance at the lectures of the Civilist would not have been required. Admission was linked to admission to practice as a procurator before the Commissary Court. A regulation of 1685 established a widows' and orphans' fund and provided that if anyone who had been in the service of a member of the Commissary Court — that is of an advocate admitted to practise before it — “for any considerable time” desired to be admitted, he had either to undergo “a tryall” and pay £40 (Scots) or, foregoing a trial, to pay one hundred merks (£66 13s 4d). It was also provided that “no stranger who has not been bred with some member of the forsaid court for some considerable time” was to be admitted as a procurator before it “till they undergoe such examine and tryall as the Commissar and remanent members of the said court shall think fitt”. They had also to pay £200 (Scots).⁶³ Commissaries, if not already members of the Society, were sometimes admitted.⁶⁴ Practice before the Sheriff Court required separate admission there, and there seems to have been some co-operation between the Sheriff and the Society of Advocates to regulate this.⁶⁵ Such co-operation was easy. The Procurators Fiscal of Aberdeenshire were almost invariably members of the Society,⁶⁶ as commonly were the Sheriffs-Substitute.⁶⁷ Evidence from the 1740s confirms that admission to the Society of Advocates required apprenticeship to a member and then examination on Scots law and forms of process.⁶⁸ Other lawyers in Aberdeen may have been interested in such classes, but we know virtually

63. *History of the Society of Advocates in Aberdeen*, n 58 *supra*, pp 52-53.

64. See, *eg*, *ibid*, p 291 (Robert Paterson).

65. *Ibid*, p xi.

66. *Ibid*, p 410.

67. *Ibid*, p 417.

68. Aberdeen University Library, MS 214, Nineteen Papers Catanach 1743-45, Memoriall ffrom Some of the Members of the Marischall College, p 5.

nothing about them and their training, other than that work as a notary was regulated by an Act of Sederunt of 1595 which required an apprenticeship of five years and a knowledge of Latin.⁶⁹ It seems likely, however, that the notaries and lowly writers would have been less concerned with such classes than the more socially aspiring Society of Advocates.

A final point to note is that the Masters of King's College seem to have had a varying level of determination to ensure that the Civilist was an active teacher in these years. If they seem to have been willing to appoint Nicholson because he could be useful to them in Edinburgh, there does seem to have been a preference for someone who would reside and teach. Of course, the politics of appointments were always complicated. John Gordon may have been appointed Civilist in 1696 because he would reside and teach, but he was also closely related to the Gordon family group in King's College,⁷⁰ while Haliburton was obviously appointed as son of the Bishop of Aberdeen.

UNIVERSITY CLASSES IN LAW, 1717-1750

From 1699 onwards, some advocates taught law privately in Edinburgh in classes modelled on the example provided by legal education in the Dutch universities. Out of these classes grew the chairs in Public Law and the Law of Nature and Nations (1707), Civil Law (1710), Universal History (1719), and Scots Law (1722) in the University of Edinburgh. The wishes of the Faculty of Advocates were thereby fulfilled. Moreover, a chair of Civil Law was founded in emulation in the University of Glasgow in 1714.⁷¹ Other than that in Universal History, all of these chairs were occupied by members of the Faculty of Advocates. This suggests that whatever may have happened before these developments, thereafter the Faculty of Advocates were unlikely to patronise the Civilists at King's College for their training in law.

The Visitations of the 1690s had been unsuccessful in ridding the Aberdeen universities of Jacobites and episcopalians as the region was a bastion of disaffection, where a Jacobite and episcopalian gentry were able to protect the Masters of the Colleges. The Rebellion of 1715 was now to prove their downfall. A Visitation of 1716-17 carried out an effective purge.⁷² The records of the Visitation noted:

"Mr John Gordon, Professor of Civil law, did not qualify according to Law till the Twenty first of February last: He concurred with the disaffected people of Old Aberdeen in observing a Thanksgiveing for the arrival of the Pretender, by going to Church on that day and hearing the Pretender prayed for by an Episcopal

69. Act of Sederunt, 31 December 1595, *The Acts of Sederunt of the Lords of Council and Session, from the 15th of January 1553, to the 11th of July 1790* (1790). See also the Act 1587, c 29 *Acts of the Parliaments of Scotland*, iii, pp 448-49.

70. See Emerson, *Professors, Patronage and Politics*, n 21 *supra*, pp 19-20.

71. Cairns, "John Spotswood, Professor at Law" n 17 *supra*; Cairns, "Origins of the Glasgow Law School" n 58 *supra*.

72. Emerson, *Professors, Patronage and Politics*, n 21 *supra*, pp 18-34.

Intruder, Under the name of King James the Eight, and by having Illuminations in the Windows of his House upon that occasion.”⁷³

He was accordingly deprived of his office on 22 June 1717.⁷⁴

The Government did not trust those Masters of King's College who survived the purge and the procurators of the four nations (individuals elected *ad hoc* to participate in certain elections, including that of the Civilist) to fill vacant positions with suitable men.⁷⁵ A royal Presentation dated 1 October 1717 therefore gave the Chair of Civil Law to Alexander Garden, younger of Troup. The Presentation provided that Garden should be admitted to his office by an *ad hoc* body consisting of the magistrates of Aberdeen, and the ministers of Old and New Aberdeen. He apparently convened these men in a tavern, where, as a jaundiced observer put it, “he was clandestinely admitted over a bottle in order to shun any interruption he might meet with from his Predecessor or otherways”. This was on 4 November 1717.⁷⁶ Garden had been admitted a member of the Faculty of Advocates in Edinburgh in 1712.⁷⁷ As well as being a local man, he was a supporter of the Squadrone Volante, who had come to power in 1716. This political connection had already secured him appointment as Sheriff-Depute of Aberdeen on 14 August 1716. Emerson plausibly suggests that his appointment as Civilist may also have been due to the position of Sir Francis Grant of Cullen, his father-in-law, on the commission of Visitation.⁷⁸

Garden was to prove an absentee professor. After his admission by the magistrates and ministers, he left for Edinburgh, and he does not feature in the minutes of King's College until 27 March 1719, when he produced his presentation and admission to a meeting of the College and took the Foundation oath and the oath *de fidei administratione*.⁷⁹ He returned in March of the next year.⁸⁰ At the end of the month he undertook to give a public prelection; he duly delivered one *de Supremi Magistratus officio*, before again departing for Edinburgh.⁸¹ He returned to the College in April of 1721, 1722, and 1723.⁸² He evidently only attended when other business brought him to Aberdeen. The Masters started to put pressure on the absentee Civilist, and on 21 October 1723 the minutes record that “the principal and masters considering the great inconveniences to the university by the neglect of the profession and study of the civil Law did judge it their

73. Anderson, *Records of the Aberdeen Universities Commission 1716-17* (1900), p 9.

74. *Ibid*, p 51; Emerson, *Professors, Patronage and Politics*, p 34. Matters had obviously been tense in Aberdeen in the period running up to the Visitation as in May 1716 Gordon and his family had been attacked by students in their home: Aberdeen University Library, King's College Minutes 1716-17, 1717-22, MS K 41, fos 6v-7r.

75. Emerson, *Professors, Patronage and Politics*, n 21 *supra*, pp 38-40.

76. Anderson, *Records of the Universities Commission 1716-17*, pp 53-54; Aberdeen University Library, King's College Minutes 1716-17, 1717-22, MS K 41, fos 32v-33r, 34v.

77. *The Minute Book of the Faculty of Advocates Volume 1, 1661-1712*, ed Pinkerton (1976), p 301; Grant, *Faculty of Advocates*, n 37 *supra*, p 78.

78. Emerson, *Professors, Patronage and Politics*, n 21 *supra*, pp 39-40, 137.

79. Aberdeen University Library, King's College Minutes 1716-17, 1717-22, MS K 31, fo 34v.

80. *Ibid*, fos 51v-52r (7, 8, 14 March 1720).

81. *Ibid*, fo 54v (21, 30 March 1720).

82. *Ibid*, fos 64v (17 April 1721), 72v (2 April 1722), 73r (16, 17 April 1722); Aberdeen University Library, King's College Minutes 1722-1733, MS K 42, fo 9r (12 April 1723).

duty to represent the same to Mr Alexander Garden Civilist and to desire his attendance conform to the foundation''. The Principal was also authorised to discuss this further with Garden in Edinburgh.⁸³ The Principal reported on 20 January 1724 that the Civilist had promised to respond in writing.⁸⁴ On 3 April Garden had resigned the office. Before filling it, on 6 April the Principal and Masters now declared and enacted:

''[T]hat whosoever shall happen to be nominat and elected shall in the termes of the fundatione be oblidged to actuall residence, and to teach the said Civill law during the sessions of the said Colledge in such place as shall be agreed to by the principal and Masters. And In respect that by the fundatione it is appointed that the Civilist should read and teach in his own Manse which of a long tyme hes been (as is reported) by fyre or some accident ruined and quite demolished, Therfor it is enacted and by acceptatione of the presentatione to be now given, Whosoever shall be chosen and accept of the said presentatione shall be oblidged to make no pretext of the want of a Manse for not teaching and giveing prelections publict and private as is above mentioned.''⁸⁵

The reference to the Civilist's manse perhaps indicates an argument that Garden had used to support his absence.

The successful pressure on Garden to resign and the resolution to require the new Civilist to reside and teach have two possible and complementary interpretations. First, it could reflect a genuine desire that Civil law should be taught in King's College. Earlier practice does suggest that there already was a preference for a Civilist who would reside and teach. Moreover, the Principal and Masters would have been well aware of the new law chairs in Edinburgh and Glasgow which had demonstrated that there was a market in Scotland for legal education in a university. Reinforcing this would have been a recent development in Marischal College in Aberdeen. The issue is much obscured because the evidence for it is found in papers arising out of a law suit in the 1740s, but in the written pleadings of that case there is found the statement:

''Mr. David Verner Professor of Philosophy there [Marischal College], Who had regularly studied the Civill Law Two full years under Professor Craig at Edinburg, and one Year The Civill and Scotch Law under Professor Forbes at Glasgow as by Certificates from these Colleges he can make appear . . . At the desire of the Lawyers of Aberdeen and by authority of the Rector and faculty of the Marischall College In the Year of 1722 began to profess and to teach that science At which time There was a Civilist in the Old Town who being an Advocate in Edinburgh did not reside and teach.''⁸⁶

The question of Verner's classes in law will be discussed a little later, but the evidence shows that he did teach. This innovation at the rival institution would have made the Masters at King's very aware of the absentee Garden's failure to teach. Secondly, as Emerson has shown, Garden was closely linked with the Squadrone. The period when he was ousted was a period

83. Aberdeen University Library, King's College Minutes 1722-1733, MS K 42, fo 12v.

84. *Ibid*, fo 13r.

85. *Ibid*, fos 15v-16r.

86. Aberdeen University Library, MS K 214, Nineteen Papers Catanach 1743-45, Memorialis from Some of the Members of the Marischall College, p 4. *Fasti Academiae Mariscallanae Aberdonensis*, ed Anderson (1898), ii, p 40 gives the date as 1724. This may be a mistake. The minute books of Marischal College are silent on the issue.

when Ilay and the Argathelians were coming to ascendancy in Scotland, including in the universities of Aberdeen, and in 1724 the Squadrone were to lose their control over the Rector's Court of King's College.⁸⁷ As Garden was an outsider with no close links with any of the Masters at King's, it may have been easy politically for the Masters to decide to engineer his departure on the grounds that he did not teach and reside in conformity with the terms of the Foundation. It is worth noting in this respect that he was to lose the office of Sheriff Depute in 1728.⁸⁸ It was not, however, necessarily especially easy to oust Garden from the Civilist's chair. If the Masters could claim that he was not teaching in conformity with the Foundation, he could in turn point to the requirement in the Foundation that he have a manse in which to teach. Some sort of accommodation had therefore to be reached. It is therefore unsurprising to find William Orem informing us that Garden was bought out for the sum of 4,500 merks, that is, around £250 sterling.⁸⁹ This was a fair purchase price, given that at this date the income from the chair was £40 14s 01½d *per annum*.⁹⁰

The purchaser was Alexander Fraser of Powis, the Subprincipal of King's College. Later on the day on which the Masters accepted the demission of Garden and passed their resolutions on the Civilist, Alexander Fraser, son of the Subprincipal, was elected Civilist.⁹¹ Born in 1699, the new professor had been admitted to the Faculty of Advocates in Edinburgh in December 1722.⁹² He had also graduated MA from King's College in November of that year.⁹³ Both Frasers were Argathelians.⁹⁴ On 10 April Fraser produced his presentation and admission to the office at a College meeting and duly took his place.⁹⁵ The sederunt and minutes of the meetings of the College show that thereafter he resided and participated fully in corporate life, attending virtually every meeting until his death in 1741. He was awarded the degree of LLD on 15 March 1725, and on 29 March was appointed to prepare the diploma for the same degree conferred on the College's great benefactor, James Fraser of Chelsea.⁹⁶ He was elected as Master of Mortifications on 2 October 1727, serving until 1736.⁹⁷ On 27 August 1733 he was elected Dean of the Faculty of Law.⁹⁸ He was engaged

87. Emerson, *Professors, Patronage and Politics*, n 21 *supra*, pp 39-40, 43, 45.

88. Grant, *Faculty of Advocates*, n 37 *supra*, p 78.

89. Orem, "A description of the Chanonry in Old Aberdeen . . . 1728", in Nichols (ed), *Bibliotheca Topographica Britannia* (1782), iv, p 173. I owe this reference to Roger Emerson.

90. Chamberlayne, *Magnae Britanniae Notitia* (1727), p 13 (separately paginated list of Scottish offices).

91. Aberdeen University Library, King's College Minutes 1722-1733, MS K 42, fo 16r (6 April 1724).

92. Grant, *Faculty of Advocates*, n 37 *supra*, p 76; *The Minute Book of the Faculty of Advocates Volume 2, 1713-1750*, ed Pinkerton (1980), p 57.

93. Aberdeen University Library, King's College Minutes 1722-1733, MS K 42, p 5 (7 November 1722).

94. Emerson, *Professors, Patronage and Politics*, n 17 *supra*, p 137.

95. Aberdeen University Library, King's College Minutes 1722-1733, MS K 42, fo 16v.

96. *Ibid*, fo 22v.

97. *Ibid*, fo 45; Aberdeen University Library, King's College Minutes 1733-1754, MS K 43, p 46 (1 November 1736).

98. Aberdeen University Library, King's College Minutes 1722-1733, MS K 42, fo 88v.

in other aspects of the College's business, such as attending meetings of the Presbytery to look after the College's interests.⁹⁹

Thus, though Fraser was another advocate in Edinburgh, he was not an absentee professor. His father's position might suggest that Garden was got rid of by a ruse in order to provide an annuity for the son to support him while trying to build up a practice in Edinburgh. This was evidently not the case, and, indeed, it is difficult to accept, especially given his father's position, that the express requirement that the new Civilist reside and teach would have been inserted in the minutes if Fraser was aiming to be a sinecurist. Moreover, as Fraser was very newly admitted as an advocate, he would have had no time to build up any practice in Edinburgh, and may have been willing to return home to Old Aberdeen to reside and teach, instead of waiting for clients in Edinburgh. In this context, it is worth noting that his special graduation as an MA in November 1722 hints that he was more interested in an academic than a forensic career. A further attraction would have been that his father was building up and improving the small estate of Powis which was opposite the College.¹ There was much to draw the new Civilist to his post, and, as we have seen, he resided and had an active career in the College.

The next question is whether he ever taught or was intended to teach. Although we have no details of his studies in law, his admission as an advocate by examination on Civil law suggests he was at least nominally qualified to teach the subject. In 1787 it was alleged that though Fraser "did constantly for near twenty years reside, he never found a class". The source for this is to some extent suspect, however, since the claim was made in the context of an argument against the likely success of a law teacher in a united university.² There is some further indirect and equivocal evidence concerning the issue of whether or not he ever taught. A major quarrel broke out in the College over the election of Fraser's successor.³ One candidate was James Thomson of Portlethen, a member of the Society of Advocates in Aberdeen, who had close connections with both the universities of Aberdeen, serving as Dean of Faculty of Marischal College from 1728-45, and as one of the procurators of the four nations at King's in 1743.⁴ The other candidate was Sir William Forbes of Pitsligo. Though a local man, he was a member of the Faculty of Advocates in Edinburgh.⁵ At the meeting on 24 February to deal with the election of a Civilist, the Principal read the resolutions of the University about the absence of Garden of Troup and the

99. Aberdeen University Library, King's College Minutes 1733-1754, MS K 43, p 50 (31 December 1736).

1. See Simpson, "The Medieval Topography of Old Aberdeen", in Smith (ed), *Old Aberdeen: Bishops, Burghers and Buildings* (1991), p 10; *Powis Papers, 1507-1894*, ed Burnett (1951), pp 53-72.
2. *An Estimate of the Expediency, Justice, and Legality, of the Plan Proposed by the Marischal College of Aberdeen, for an Union of it with the University and King's College of Aberdeen* (1787), found quoted in Humphries, *William Ogilvie and the Projected Union of the Colleges 1786-1787* (1940), p 23, and in *Papers Relating to the Proposal for Uniting the King's and Marischal Colleges*, p 80.
3. See Emerson, *Professors, Patronage and Politics*, n 21 *supra*, pp 63-65.
4. *History of the Society of Advocates in Aberdeen*, n 59 *supra*, p 355; Aberdeen University Library, King's College Minutes 1733-1754, MS K 43, p 186.
5. Grant, *Faculty of Advocates*, n 37 *supra*, p 74.

act requiring whoever be appointed Civilist to reside and teach, and emphasised the need to elect someone who would carry out these duties. When the meeting went to a vote, he voted for Thomson, who had promised by letter to reside and teach.⁶ The election was disputed and the matter went to the Court of Session, which finally declared on 15 July 1741 that Forbes had been elected.⁷ Forbes was duly admitted as Civilist on 27 August 1741; the Principal registered a protest, one of the grounds of which was that Forbes would not reside and teach Justinian's *Institutes* as the Foundation required.⁸ The split in the College over this election was evidently related to family interests and the struggles between Ilay's men and the Squadrone (perhaps the adherents of the latter now joined by some who were supporters of Argyll, no longer united with his brother).⁹ It is none the less tempting to give some value to the Principal's stress that there should be a Civilist who not only would reside (as Fraser had) but would also teach the *Institutes*. Should this evidence be taken as meaning that, as least some of the time, Fraser taught? Or was the Principal mentioning teaching purely because his argument was grounded on the Foundation which required the Civilist to teach as well as to reside? It is impossible to be certain, though the Principal's argument at least suggests that to have a Civilist who taught would have been generally regarded as desirable, while the claim in 1787 that Fraser never found a class might suggest that he had sought to have one.

Fraser's immediate successor, Sir William Forbes, did not neglect the College, and is noted sufficiently often in the sederunt of the minutes of the College's meetings as to suggest he resided, at least in 1742-43.¹⁰ He was twice appointed one of the visitors to inspect the accounts of the Master of Mortifications, and once those of the Procurator.¹¹ In the litigation over who was rightly appointed his successor, it was alleged in one party's pleadings that "we have never yet had an Instance of a non Resident Member except Mr Garden of Troup". It was further noted that the Act of 24 April 1724 requiring the Civilist to reside and teach was read at Forbes's election, and claimed "that it was the Opinion of the Society yea the unanimous opinion (for there was no opposition to it) that the Article of Residence ought not to be dispensed with."¹² These remarks tend to confirm that Forbes did reside, or spend enough time in Aberdeen for it to be represented that he did. By refusing to dispense only with the requirement of residence the second

6. Aberdeen University Library, King's College Minutes 1733-1754, MS K 43, pp 109, 126.

7. See Fettercairn MSS, on deposit in the National Library of Scotland, Acc 4796/213, for papers relating to this litigation, including the extract decree.

8. Aberdeen University Library, King's College Minutes 1733-1754, MS K 43, p 138.

9. Emerson, *Professors, Patronage and Politics*, n 21 *supra*, pp 64-65.

10. Aberdeen University Library, King's College Minutes 1733-1754, MS K 43, pp 142, 160, 167, 168, 169, 177, 178, 179 (15 October 1741, 7 September 1742, 18 September 1742, 14 October 1742, 18 October 1742, 3 November 1742, 16 March 1743, 15 April 1743, 2 May 1743).

11. *Ibid*, pp 144, 168 (15 October 1741, 18 October 1742).

12. University of Aberdeen, MS K 214, Nineteen Papers Catanach 1743-45, Memoriall from Mr Alexander Rait, p 3.

implies that he did not teach, since residence and teaching had earlier been linked together. Forbes died on 12 May 1743.¹³

After the death of Sir William Forbes, there were two candidates for the Civilist's office in King's College. One was Charles Hamilton Gordon, a member of the Faculty of Advocates in Edinburgh;¹⁴ the other was James Catanach, a member of the Society of Advocates in Aberdeen.¹⁵ Catanach had been awarded the degree of LLD by Marischal College on 31 May 1743, within three weeks of Forbes's death, the minute recording that he was examined by David Verner, and was "found truly well qualified in a Strict Examination".¹⁶ At the meeting to elect a successor to Sir William Forbes, there was a dispute over the choice of the procurators of the four nations and who was validly elected as such. Depending on who was properly elected, either Catanach or Gordon was in turn elected as Civilist. Both claimed that they had been, and both produced presentations to the office to Robert Paterson, the Commissary, who, as Vice-Chancellor *ex officio*, was empowered to admit the Civilist to his chair.¹⁷ A law suit was necessary to resolve the issue, and Paterson raised an action of multiplepoining before the Court of Session.¹⁸

At bottom, the dispute was between two family factions and had political overtones,¹⁹ but once the issue of the procurators of the four nations had dropped away, the focus of the litigation was the meaning of a provision of the Foundation of King's College that required the Civilist to hold a doctorate in Civil law or, failing that, to have achieved the degree of licentiate in Civil law *cum rigore examinis* and, within a year of appointment, to be promoted to the doctorate. This provision obviously derived from the medieval practice of awarding the licentiate on the basis of an investigation into the studies of the graduand followed by what was termed a "private" or "rigorous" examination by disputation on a *quaestio*, with the doctorate subsequently awarded after a largely ceremonial "public" examination.²⁰ Gordon and his supporters claimed that his examinations for admission as an advocate — a private trial in Latin on civil law, public defence of printed theses in Latin on Civil law, and a Latin speech on Civil law before the Lords of Session — amounted at least to the equivalent of a licentiate in Civil law awarded *cum rigore examinis*. Catanach argued that he possessed the degree of LLD required by the Foundation and therefore was properly elected Civilist, while Gordon was not. Moreover, should his degree be defective, or should this requirement be

13. Aberdeen University Library, King's College Minutes 1733-1754, MS K 43, p 180 (1 June 1743); Grant, *Faculty of Advocates*, n 37 *supra*, p 74.

14. Grant, *Faculty of Advocates*, p 83.

15. *History of the Society of Advocates in Aberdeen*, n 59 *supra*, p 114.

16. Aberdeen University Library, Marischal College Minutes 1729-1790, MS M 41, fo 110v. For the text of his diploma, see Anderson, "The Catanach Case" (1888) 1 *Scottish Notes and Queries* 158.

17. Aberdeen University Library, King's College Minutes 1733-1754, MS K 43, pp 181-203.

18. See *Catanach v Gordon* (1745) 1 Pat App 401 at 402.

19. Emerson, *Professors, Patronage and Politics*, n 21 *supra*, p 66.

20. See Verger, "Teachers" in de Ridder-Symoens (ed), *A History of the University in Europe. Volume 1: Universities in the Middle Ages* (1992), pp 144, 145-46.

in disuse, he had gained the majority of the votes.²¹ The obvious argument against Gordon's case was that to be an advocate was not to possess the university degree the Foundation required: no matter how "rigorous" the examination for admission was, it could not create an advocate a licentiate in laws, for only a university degree could give this status. If this point may seem well taken, the advocates in fact had deliberately modelled their examinations on those of a university,²² while in 1714 King's College had awarded the degree of LLD to Alexander Cuming (who went on to an even higher rank as Chief of the Cherokees in 1730) on the grounds that he had passed his private trial in Civil law for admission as an advocate.²³ The substance of the examination of Gordon had undergone was indeed rigorous. The only arguments against Catanach's qualification were either that Marischal College had not the authority to grant degrees in law or that, if it did have such authority, the degree had not been properly conferred on him.

There can be no doubt that the degree of LLD was conferred on Catanach with the purpose of qualifying him for the office of Civilist: this is confirmed by the date, by the phrasing of the minute of Marischal College to echo the terms of the requirement of a "rigorous" examination found in the Foundation of King's, and by the admission by Catanach's supporters of the truth of the accusation to this effect made by the Principal of King's College at the election meeting.²⁴ Catanach was examined for the degree upon "the principles of Right and wrong (the foundations of all Law) and also on the various kinds of Tutors and Curators the actiones Tutelae directae et contrariae the satsidationes Tutorum etc. De acquisitione Domini De obligationibus, and many other Questions in the Civill Law". It was claimed that this was substantially the same as the private examinations of advocates and that Catanach had answered the questions satisfactorily in Latin.²⁵ The award of law degrees in Scotland in the eighteenth century has not been systematically studied. It is often assumed that they were only "honorary", but to view them as such is clearly anachronistic.²⁶ There are other instances of individuals being examined for the award of the degree of LLD;²⁷ further study would be necessary to be definitive on the point, but Verner's examination of Catanach is by no means inconsistent with practice in examining for this degree in other Scottish universities. We need not assume the examination was entirely nugatory, although it may not have been so rigorous as that required for admission as an advocate.

21. The arguments are neatly summed up in *Catanach v Hamilton-Gordon* (1744) Mor 12253.

22. See Cairns, "Formation of the Scottish Legal Mind", n 15 *supra*, (p 306), pp 255-63.

23. Aberdeen University Library, King's College Minutes 1709-14, MS K 40, fo 26v (2 January 1714); Grant, *Faculty of Advocates*, n 37 *supra*, p 47.

24. Aberdeen University Library, Minutes of King's College 1733-1754, MS K 43, p 194; Aberdeen University Library, MS K 214, Nineteen Papers Catanach 1743-45, Memorial from Mr Alexander Rait, p 5.

25. Aberdeen University Library, MS K 214, Nineteen Papers Catanach 1743-45, Memorial from Some of the Members of the Marischal College, p 5.

26. See Johnston, "All Honourable Men? The Award of Irregular Degrees in King's College and Marischal College in the Eighteenth Century", in Carter and Pittock (eds), *Aberdeen and the Enlightenment: Proceedings of a Conference held at the University of Aberdeen* (1987), p 136.

27. See, eg, Cairns, "Origins of the Glasgow Law School", n 58 *supra*, p 176.

Gordon was successful in the Court of Session; the House of Lords reversed this decision and awarded the chair to Catanach.²⁸ The minutes show that Catanach was certainly useful to the College on a day-to-day basis. Whatever may have been Catanach's skills in law, he most certainly did not teach, as in the law suit that in turn arose in the 1760s over the disputed election of his successor, the position of Civilist could now confidently be claimed to be a "sinecure as to teaching".²⁹

It was in the course of the litigation between Gordon and Catanach that, in order to support the alleged right of Marischal College to award degrees in law, the claim was made that David Verner of the College started to teach Civil law in 1722 at the request of the lawyers in Aberdeen and on the authority of the Rector and Masters of Marichal College. The contrary, however, was also alleged in the same dispute. Thus Principal Chalmers of King's College said in 1743: "[T]here is no profession of Law in [Marischal] College".³⁰ Later Thomas Gordon wrote:

"To prelect in law might be the pretence, but could not seriously be the intention. Mr Vernor's time was fully occupied already. His attendance on his Philosophy class for three hours a day, rendered it impossible that he could propose with success to take upon himself at the same time the instruction of Law students. Being an obliging worthy man, he gave his assistance in directing some young men of the College, who were designed for the Law, to proper books, in order to pick up the rudiments of the profession; but he never pretended that he was a regular Law Professor or that he ever educated a Law student."³¹

Gordon's purpose was also to deny that Marischal College was a university empowered to award degrees in law. The whole matter obviously requires fresh examination.

Verner studied at the University of Glasgow under the regent Gershom Carmichael, gaining the degree of MA in 1713.³² Carmichael is noted for having played a prominent role in Scotland in the reorientation of ethics and moral philosophy around theories of natural law derived from Grotius and Pufendorf.³³ The specificity of the claim that Verner had studied Civil law for two years with Craig in Edinburgh and Civil law and Scots law for one year with Forbes in Glasgow — and could prove it with certificates — encourages belief in its truth.³⁴ It would follow that Thomas Gordon's allegation that Verner had never "passed the threshold of a Law school, nor

28. *Catanach v Hamilton-Gordon* (1744) Mor 12253; *Catanach v Gordon* (1745) 1 Pat App 401.

29. Aberdeen University Library, MS K 216, Memorial for William Thom Advocate in Aberdeen against Mr David Dalrymple Advocate, p 2.

30. Aberdeen University Library, King's College Minutes 1733-1754, MS K 43, p 194.

31. Aberdeen University Library, MS 3107/4/5/1, p 105. I am indebted to Roger Emerson for this quotation and reference.

32. *Munimenta alme universitatis Glasguensis: Records of the University of Glasgow from its Foundation till 1727*, ed Innes (1854), iii, pp 48, 197.

33. See eg, Moore and Silverthorne, "Gershom Carmichael and the Natural Jurisprudence Tradition in Eighteenth-Century Scotland", in Hont and Ignatieff (eds), *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment* (1983), p 73; Moore and Silverthorne, "Natural Sociability and Natural Rights in the Moral Philosophy of Gershom Carmichael", in Hope (ed), *Philosophers of the Scottish Enlightenment* (1984), p 1.

34. Aberdeen University Library, MS K 214, Nineteen Papers Catanach 1743-45, Memorial from Some of the Members of the Marischal College, p 4.

had opened a law book but as matter of curiosity'' is wrong.³⁵ It is possible to work out the probable sequence of Verner's studies. He would have spent 1713-1715 with Craig in Edinburgh. He presumably studied Justinian's *Institutes* in the first of these years and the *Digest* in the second. He would then have returned to Glasgow. The disruption caused by the Jacobite rebellion meant that Forbes did not open his class in Glasgow in the session 1715-1716 until 3 January 1716. He proposed to teach Scots law and Civil law. He had three students and Verner presumably was one of them. (In 1716-17, Forbes appears not to have taught.)³⁶ The next year Verner was one of the men appointed to replace those purged from the Aberdeen universities, becoming one of the regents at Marischal College, an appointment he owed to his Glasgow connections and the Squadrone.³⁷

The Commissary Clerk's Office in Aberdeen had been destroyed by fire on 31 October 1721. On 25 January 1722 the Commissary, Commissary Clerk, and various lawyers in Aberdeen met to remedy the destruction of the records both of the court and of the admission of procurators before it. They wrote various styles and forms of process into a book, which they declared to be as valid and sufficient a register as the lost register, and they approved all admissions of procurators before the Commissary Court where admissions were extant in the Sheriff Court books.³⁸ The coincidence of years means it is tempting to view these events as promoting a consideration of general issues involving the Society which prompted the request 'of the Lawyers of Aberdeen' in 1722 that Verner should teach law. In this respect it is worth noting that 19 men who were either an alumnus or an MA of either Marischal or King's College were admitted as advocates between 1680 and 1740. Of these, 16 were alumni or graduates of Marischal College and only four of King's. One of the MAs of King's was an alumnus of Marischal (hence the discrepancy of the figures) who was awarded the degree 15 years after his admission as an advocate — presumably for reasons other than the successful completion of a course of study.³⁹ Seven of these alumni of Marischal College were among the men meeting with the Commissary on 25 January 1722. One can well imagine that, in the absence of a Civilist teaching in King's College, these men would turn to their *alma mater* for assistance. It was the university favoured by the advocates, it was conveniently located in Aberdeen rather than Old Aberdeen, and it possessed a Faculty member who had acquired a modern education in law in the universities of Edinburgh and Glasgow.

The first clear evidence we have for Verner's class comes in 1727, in Chamberlayne's reference work *Magnae Britanniae Notitia*, which, in listing office holders in Scotland and describing the universities, noted of

35. Aberdeen University Library, MS 3107/4/5/1, pp 104-5.

36. *Scots Courant*, 7/9 December 1715; Forbes to Stirling, 30 January 1717, Glasgow University Library, MS Gen 204/16. See Cairns, 'Origins of the Glasgow Law School', n 58 *supra*, p 175.

37. Emerson, *Professors, Patronage and Politics*, n 21 *supra* (p 308), p 36.

38. *History of the Society of Advocates in Aberdeen*, n 59 *supra*, pp 54-55. This volume has recently come once more to light: Meston and Christie, 'The Jurisdiction of Local Commissary Courts. An Interim Report' [1995] *Judicial Review* 377.

39. See *ibid*, pp 418-27. One of the Marischal graduates appears to be an advocate when he graduates.

Marischal College: "There is also the Institutes of the Civil Law, taught by the said Mr. *David Verner*, in the said University."⁴⁰ From that year onwards, *Magnae Britanniae Notitia* routinely recounts the same until after Verner's death in 1752, when in the 1755 edition it is stated: "There is also the Institutes of the Civil-Law taught by the said Mr. — in the said University."⁴¹ There is an evident tendency for entries in this work to be routinely carried forward from edition to edition without appropriate revision, but these notices of Verner's class nonetheless show that he appears to have started to teach or to offer to teach Justinian's *Institutes*, if perhaps only some of the time, in the 1720s.

Corroborative evidence that he may actually have continued to teach over the next two decades is provided by the *Caledonian Mercury*, an Edinburgh-based newspaper, which carried the following advertisement in 1744: "That Mr *DAVID VERNER* Professor of *CIVIL LAW* and *PHILOSOPHY* in the University and Marischall College of Aberdeen, begins his colleges upon the *Imperial Institutes of the Civil Law*, upon Tuesday 13th of this instant Month of November."⁴² The weight to give to this is unclear, however, since the notice appeared one month before the Court of Session adhered on 4 December to an interlocutor originally given on 20 July 1744 in the law suit in which it was alleged and denied that he taught Civil law.⁴³ The advertisement could have been intended to support one side in the litigation and influence the decision of the court. This law suit has been discussed elsewhere,⁴⁴ but it is necessary to examine some aspects of it here for the light it throws on the question of Verner's teaching.

This then returns us to the issue of whether Verner was actually teaching in the 1740s. One of the memorials produced in the dispute for the Masters of Marischal College alleged that Verner "has at present students under him". If Thomas Gordon was later to suggest that Verner "gave his assistance in directing some young men in the College, who were designed for the Law, to proper books", this specific allegation, which was a matter of easy proof or disproof, suggests something more, especially since it talked of Verner giving "prelections", that is, formal lectures.⁴⁵ Support for this comes from an unexpected source. The mid-1780s saw one of the periodic attempts to unite the two universities. The main opposition came from King's College. One argument raised in favour of the proposal was that it might help to create a successful law school. A memorial from King's College opposing the

40. Chamberlayne, *Magnae Britanniae Notitia* (1727), separately paginated list of Scottish offices, p 15. This is mentioned neither in the 1723 edition, where the list of offices dates from 1722, nor in the 1726 edition, where the list of offices is dated 1725. Since the updating of these lists was neither thorough nor comprehensive, it is unsafe to conclude from them that this means that Verner did not teach before 1727.

41. Chamberlayne, *Magnae Britanniae Notitia*, list of Scottish offices, p 27.

42. *Caledonian Mercury*, 6 November 1744.

43. *Catanach v Hamilton-Gordon* (1744) Mor 12253.

44. Emerson, *Professors, Patronage and Politics*, n 21 *supra* (p 308), pp 65-69; Anderson, "The Advocates in Aberdeen: The Catanach Case" (1888) 1 *Scottish Notes and Queries* 129.

45. Aberdeen University Library, MS K 214, Nineteen Papers Catanach 1743-45, Memoriall ffrom Some of the Members of the Marischall College", p 4; Aberdeen University Library, MS 3107/4/5/1, p 105.

union remarked that there was already a professorship of law in King's College and added that

"for a century past, none in that office have found the smallest encouragement for opening a class. An attempt at it was made near forty years ago at Aberdeen, by a person unquestionably well qualified, but without a shadow of success."⁴⁶

Putting aside the assessment of Verner's success, this may refer to his attempting to teach in the 1740s.

In sum, the evidence suggests that from 1722 onwards Verner gave an elementary course of lectures on Civil (that is Roman) law based on Justinian's *Institutes*. There is no evidence of the standard achieved in the course, although it was claimed in 1743 that Verner hoped "to give a good account" of his present students, and "before the end of the session to make some of them able to undergo even Mr Gordon's examination, if it be not too rigorous".⁴⁷ That is, the students would have achieved the level necessary for success in the examinations for admission as an advocate. Verner's education in Edinburgh and Glasgow made him well able to do this. Whereas we know that in his classes on ethics and moral philosophy Verner taught the works of Shaftesbury and Hutcheson and lectured on natural jurisprudence,⁴⁸ there is no indication of what he taught in Civil law, although it is likely that, as was the general contemporary practice in Scotland, he taught from one of the modern Dutch compends rather than from the actual text of the *Institutes*.⁴⁹ He would have used the text as the basis of a commentary and exposition. While the description of his course in the *Caledonian Mercury* is in English, it is fair to assume that he would have taught Civil law in Latin, as was still the universal practice in Scotland until around 1750.⁵⁰ There is no evidence of what materials he used to construct these lectures, though he personally had a large and important private library of books,⁵¹ while at this time Marischal College also had a collection of books on law, mainly on Civil law, but it is difficult, however, to deduce from them anything about Verner's teaching.⁵²

The memorial of the Masters of Marischal College admitted that from 1722 Verner continued to teach only "as he has got encouragement".⁵³ This must mean that he did not teach every year, but only when there was sufficient demand. If the course was not taught every year, it must have been given relatively frequently, should there have been any truth in the claim in 1743 that Verner was spontaneously awarded the degree of LLD around

46. *Papers Relating to the Proposal for Uniting the King's and the Marischal Colleges*, p 12.

47. Aberdeen University Library, MS 214, Nineteen Papers Catanach 1743-45, Memorial from Some of the Members of the Marischal College, p 4.

48. Wood, *Aberdeen Enlightenment*, n 24 *supra* (p 308), pp 39-40.

49. See Cairns, "John Spotswood, Professor of Law", n 17 *supra* (p 307), p 145.

50. Cairns, "Rhetoric, Language, and Roman Law: Legal Education and Improvement in Eighteenth-Century Scotland" (1991) 9 *Law and History Review* 31 at 39-46.

51. *Aberdeen Journal*, 11 February 1752, calls for the return to Gilbert Gerard, Advocate in Aberdeen, of any books loaned out by Verner; *Aberdeen Journal*, 20 May 1752 advertises the sale of his library. No catalogue has survived, however.

52. Aberdeen University Library, Catalogus Librorum Bibliothecae Academiae Mariscallanae Aberdonensis An: Dom: 1726, MS M 72, pp [23]-[25]. (There are isolated law books elsewhere in the catalogue.)

53. Aberdeen University Library, MS 214, Nineteen Papers Catanach 1743-45, Memorial from Some of the Members of the Marischal College, p 4.

1739 by the Rector and faculty of Marischal College because of "these Services done the College by these prelections".⁵⁴ If correct, this suggests that we should not give too much weight to the claim made in the mid-1780s by opponents of proposals to unite the colleges that, although Verner's "class actually opened at Aberdeen" at some time in the period from the mid-1720s onwards, it "had no success".⁵⁵

The next question to consider is that of who actually attended. As with the classes of John Gordon, the Jacobite Civilist, there is no evidence. That Verner started these classes in 1722 on the suggestion of members of the Society of Advocates indicates that some of them thought it useful for their apprentices or those who intended to become apprentices to attend classes on Civil law. How many chose to do so is unknown. The suspicion must be that very few ever did, since it was not a requirement for admission to the Society. In the disputed election of the Civilist in 1743 it appears to have been assumed that advocates in Aberdeen, in contrast with members of the Faculty of Advocates in Edinburgh, would normally have no knowledge of Civil law.⁵⁶ Catanach, for example, had certainly not attended any lectures in Civil law: his legal training was gained as an apprentice to George Keith.⁵⁷ Admissions to the Society of Advocates were, however, still too low to sustain a yearly class in Civil law. Some other students may have taken Verner's occasional class as part of a polite education. Wood has shown the extent to which several prominent figures in Marischal College believed in grounding the study of natural law, politics, and literature in history. There was an emphasis on the importance of ancient history and the classics.⁵⁸ Verner's course on Civil law would have easily fitted into such a scheme of education. No doubt some men intending to pursue legal study at greater depth, whether in Edinburgh or abroad, prior to examination for admission to the Faculty of Advocates, also might have sought an elementary course of Civil law as a useful preparation. Furthermore, the course may have been of interest to theological students preparing for the ministry.

We can thus infer that, between 1722 and 1750, when there was sufficient demand, Verner would teach an elementary course on Roman law to a probably small and rather diverse group of students. John Spotswood reckoned to complete an elementary course on the *Institutes* in 75 days.⁵⁹ We do not know how much time Verner devoted to his class on Civil law but, given his regular teaching commitments, it is difficult to imagine he was willing to teach it for more than three hours a week, but this is pure conjecture.

54. *Ibid.*

55. *Estimate of the Expediency, Justice, and Legality, of the Plan Proposed by the Marischal College*, found quoted in Humphries, *William Ogilvie*, n 2 *supra* (p 319), p 23, and in *Papers Relating to the Proposal for Uniting the King's and the Marischal Colleges*, p 80.

56. Aberdeen University Library, King's College Minutes 1733-1754, MS K 43, p 198.

57. His education in law is described in Aberdeen University Library, MS 214, Nineteen Papers Catanach 1743-45, Memorials from Some of the Members of the Marischal College, p 5.

58. Wood, *Aberdeen Enlightenment*, n 24 *supra* (p 308), pp 33-60.

59. Cairns, "John Spotswood, Professor of Law", n 17 *supra* (p 307), p 145.

Verner died late in January 1752.⁶⁰ After a gap of several years Marischal College continued to appoint Professors of Law.⁶¹ None of them taught law, however, and their titular appointments were to allow them to serve as promoters for degrees in law. They lacked Verner's qualifications in law.⁶² Thus in Marischal College, as already in King's College, all attempts to teach Civil law came to an end. Verner may have managed to sustain a class, but it is evident that to do so was difficult and that the numbers in Aberdeen interested in attending were few.

CONCLUSIONS

In his protest of 1741 over the admission as Civilist of Sir William Forbes, the Principal of King's College commented on the Chair of Civil Law:

"That office being appointed also for the instruction of the children and relations of those who live in the towns and adjacent countrie in the knowledge of the laws, without putting them to the trouble and expence of sending them to a greater distance, and it being Nottour that the professor of law at Glasguo doth serve for that good purpose in the countrie thereabout, it may be presumed that if the Civilist in this College should reside and apply himself to serve these ends of that office, it would no less subservient to the good of this corner as well as for the honour of the university."⁶³

It is difficult to be other than somewhat sceptical about this. Before 1761, all the evidence tends to suggest that the classes in law in Glasgow were very small: never greater than five, according to one commentator.⁶⁴ Moreover, even if those who took these classes were from the neighbourhood (which is by no means certain), it seems likely that they often were intending members of the Faculty of Advocates in Edinburgh rather than future members of the Faculty of Procurators of Glasgow. In Aberdeen the number of apprentices of members of the Society of Advocates at any given time in this period was minuscule, and the reality seems to have been that, as with the apprentices of procurators in Glasgow, they really had no interest in classes in Civil law.

60. *Aberdeen Journal*, 28 January 1752.

61. Aberdeen University Library, Marischal College Minutes 1729-1790, MS M 41, fos 67r (Francis Skene, 13 November 1766), 77v (James Beattie, 2 April 1776).

62. After Catanach's death, there was another bitter dispute over the succession to the chair. One candidate was William Thom, advocate in Aberdeen (who had been Catanach's apprentice), who had conferred upon him by Marischal College the degrees of MA and LLB the day before the election of the new Civilist. It is unclear why it should have been the degree of Bachelor rather than Doctor of Laws that was conferred on him. It may be that Marischal College had no one currently appointed Professor of Law and therefore felt unable to award the higher degree: the College had to appoint the Principal as "Decanus" and "Promotor *pro hac vice*" for the conferment of the degree. On the other hand, it may have been because the award was based on the presentation of a certificate testifying to his application "to the study of the Civil and Municipal Laws . . . and of his Progress in them, from Mr George Turner, Advocate in Aberdeen, a Gentleman of acknowledged abilities and Integrity", rather than on any kind of examination, rigorous or otherwise. See *History of the Society of Advocates in Aberdeen*, pp 350-51; Aberdeen University Library, Marischal College Minutes 1729-1790, MS M 41, fo 61r (26 November 1760).

63. Aberdeen University Library, King's College Minutes 1734-1754, MS K 43, p 138.

64. Cairns, "Origins of the Glasgow Law School", n 58 *supra* (p 313), pp 189-90.

Those men who were intending to practice as notaries or simple writers were even less likely to be interested in such classes. Given that those seeking for admission to the Society of Advocates were examined on Scots law and the forms of process, there may have been a market for instruction in Scots law. No one seems to have considered supplying it, however, and, as the statistics for admission to the Society demonstrate, the numbers would still have been extremely low — probably too low to sustain such a class even if members of other groups of lawyers in Aberdeen might also have been interested.

On the other hand, classes on Civil law could also be viewed as providing polite and useful knowledge for the educated gentleman. If in the Aberdeen universities the science of the human mind was the foundation of the human sciences, including legal theory, and if history was taken to be the foundation of politics and natural law,⁶⁵ it was clearly nonetheless difficult to maintain a class in Civil law. Furthermore, it was only from the 1760s that John Millar in Glasgow was to show how a class on the *Institutes* could be made an introduction to the natural jurisprudence of the Scottish Enlightenment.⁶⁶ The market for relatively technical elementary classes on the *Institutes* before this must have been small in Aberdeen. It is difficult to avoid the conclusion that to try to teach Civil law in Aberdeen between 1680 and 1750 was to try to teach the wrong subject in the wrong place.

Such success as Verner had therefore calls for an explanation, especially given the failure of his contemporary Fraser in King's College to attract any students. The explanation must lie in their respective abilities as teachers and in the fact that one was in Aberdeen and the other in Old Aberdeen. Verner was a teacher of reputation who could afford to give such classes because his main source of income was from his work as a regent. For even a small group of auditors from time to time it may have been worth preparing and delivering lectures. Aberdeen was where the Society of Advocates was based, and Marischal College was a more dynamic institution than King's College. Verner was the more attractive teacher in the better location. It is also obvious that, in these local circumstances, two classes on the *Institutes* one mile apart were not going to be viable. If Verner was successful, Fraser was almost necessarily compelled not to be. It is also difficult to believe that Fraser's immediate successor, Catanach, despite his "rigorous" examination, was qualified to teach civil law. According to one of the memorials in the litigation over his appointment: "He read with Care Domat's Civill Law According to the order of Nature, Wood's Institutions and many other such".⁶⁷ Wood's book was an elementary introduction to Civil law in English, while Domat's was an analytical and rational reworking of Roman law, not of an antiquarian bent. One suspects that the

65. See Wood, *Aberdeen Enlightenment*, n 17 *supra* (p 307), pp 33-60.

66. Haakonssen, "John Millar and the Science of a Legislator" [1985] 30 *Juridical Review* 41; Cairns, "'As Famous a School for Law as Edinburgh for Medicine': The Glasgow Law School, 1761-1801", in Hook and Sher (eds), *The Glasgow Enlightenment* (1995) p 133.

67. Aberdeen University Library, MS K 214, Nineteen Papers Catanach 1743-45, Memoriall from Some of the Members of the Marischall College, p 5.

reference was also to the English translation of Domat.⁶⁸ This does not encourage confidence in the depth of his knowledge of Civil law, especially since the same source stressed his knowledge of Scots law, "The Principles of which are the same with, and many of its forms and Statutes borrowed from the Roman Law".⁶⁹ After Verner's death, Catanach would therefore be unlikely to capture the market that the former had been able to exploit.

It is therefore no surprise that with the death of Verner such instruction in Civil law as there had been in Aberdeen came to an end. None of the subsequent professors of law in Marischal College was competent to teach the subject, while the Civilist's chair had definitively degenerated into a sinecure competed for between members of the Faculty of Advocates and local practitioners in complex contests involving difficult issues of patronage arising out of family and political disputes. Members of the Faculty of Advocates generally did not want to reside in Aberdeen, while local practitioners could be useful to the College but were usually neither willing nor qualified to teach Civil law. Even if qualified the latter would want to use their time to pursue their practice rather than devote the effort to writing lectures for an inevitably small audience. It is therefore no surprise that while the Union proposals of 1754-55 provided that the Professor of Law was to be presented by the United College, they made no mention of classes on law.⁷⁰

Outside Edinburgh success in teaching law was evidently very dependent on the possession of outstanding qualities as a teacher, in order either to attract students who would otherwise have studied in Edinburgh or to cause the local profession to realise that it was desirable for apprentices to take a course in law in a university. Success probably also required the professor to make his classes attractive as part of a general polite education. No one in Aberdeen between 1680 and 1750 could entirely fulfil either of these conditions. Not even such minor success as Verner had could cause the local legal profession to support his classes, even though they had encouraged him to give them. Prospective members of the Faculty of Advocates, who were the only sizable group of individuals interested in university classes in law, were simply not interested in legal study in Aberdeen. Members of the Faculty were also those probably best qualified to teach Civil law in Scotland, but a chair at Aberdeen was of no interest to men of talent and ability among them except as a sinecure.

The location of Aberdeen therefore doomed it to failure as a potential site of a law school in the period with which we are here concerned. The local lawyers were not interested in formal instruction in law in a university, and certainly not instruction in Civil law: even if they had been, they were too few to sustain a class. The élite Faculty of Advocates wanted to develop a

68. Wood, *New Institute of the Imperial or Civil Law* (1704) and Domat, *Les lois civiles dans leur ordre naturel* (1689). See also the translation of Domat's work by Strahan as *The Civil Law in its Natural order* (1722, 2nd edn 1737). On Wood, see Robinson, "The Two Institutes of Thomas Wood: A Study in Eighteenth Century Legal Scholarship" (1991) 35 *American Journal of Legal History* 432; on Domat, see, eg, Goyard-Fabre, "Montesquieu entre Domat et Portalis" (1990) 35 *McGill Law Journal* 715.

69. Aberdeen University Library, MS K 214, Nineteen Papers Catanach 1743-45, Memoriall from Some of the Members of the Marischall College, p 5.

70. *Papers Relating to the Proposal for Uniting the King's and Marischal Colleges*, pp 5, 6.

law school in Edinburgh, and they had succeeded in doing so. Once they had done this, even the possibility of them patronising the Aberdeen chair for the education of their intrants would have vanished completely. After Verner's death, all teaching in law ceased at both universities, until very different circumstances revived it in the next century. The location of the only chair in law to survive in Scotland from the medieval period accordingly reduced it to a sinecure when legal education was fast developing elsewhere. The situation of Aberdeen prevented the discipline of law from succeeding as a subject taught in the university, despite the intense interest of the Scottish Enlightenment in natural jurisprudence.

Fifteen years ago I had the good fortune to start my career as a university teacher in the Faculty of Law of the Queen's University of Belfast. Despite dreadful tragedies that occurred during my time there, notably the murder by terrorists of a respected colleague of ability and promise, I count the years I spent teaching law at Queen's among the happiest of my life. It was therefore with a feeling of honour that I received the invitation to contribute to this special commemorative issue of the journal in which appeared my first scholarly publication. It is some ten years since I left Queen's; it was there that I learned much of my trade, and I am still aware of being marked by my time there. I hope this study of the history of another university (itself in its quincentenary year) is an adequate indicator of my affection, esteem and gratitude. The failure of legal education in the Aberdeen universities between 1680 and 1750 points up the contemporary conspicuous success of Queen's as a law school.⁷¹

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71. This paper is a much-revised part of a longer study presented under the title "Local Lawyers, Elite Lawyers, and Law Professors: The Legal Profession and the Universities in Aberdeen, 1700-1830" at the international conference on "The University in its Urban Setting" co-sponsored by the Aberdeen Quincentenary Project and *History of Universities* at Aberdeen, 2-5 July 1993. I revised this paper while a Visiting Professor at the University of Miami School of Law in the Spring of 1995. I am especially grateful to Ms Nora de la Garza of the Law Library there for her assistance. Given this paper was completed in the quincentenary year of the university of Aberdeen to commemorate the sesquicentenary of the Queen's University of Belfast, it is pleasing to note that the same year is also the sesquicentenary of the admission of Florida as a State of the Union. The Lindsay Bequest Fund of the Faculty of Law of the University of Edinburgh provided a small grant to help me pursue research in Aberdeen, where I had on some earlier occasions enjoyed the hospitality of John A. Marr. I am grateful to Aberdeen University Library for permission to quote from the manuscripts and the archival material in its possession. Dr Iain Beavan of that Library's Department of Special Collections was helpful and kind beyond any justified expectation, answering quickly queries from across the Atlantic. Mrs Jo Currie and Mr David Weston of the Departments of Special Collections of the Libraries of the Universities of Edinburgh and Glasgow respectively also promptly dealt with queries from across the Atlantic, as did my colleague Professor Hector MacQueen, who also provided useful criticism. The latter was also supplied by Professors Steve Diamond and Steve Schnably of the University of Miami, Paul Wood of the University of Victoria, and Alan Watson of the University of Georgia. Above all I benefited considerably from the suggestions and criticism of Professor Roger L. Emerson of the University of Western Ontario, who helped unstintingly.